

the lands? The bottles, so far as they constituted the consideration to be paid by the defendant, were equally applicable to, and were to be taken in payment of the personalty, as well as of the land, and there can be no propriety in saying, that the whole amount of the deficiency shall be charged upon the latter. There would, therefore, have to be an apportionment, and the land could only be considered answerable for such proportion of the deficiency as should, upon such apportionment, be found applicable to it. The personal estate was estimated at nearly one-third of the value of the realty, and hence it would follow, that the land could, in no event, be regarded as bound for more than two-thirds of the amount of the deficiency.

The decree, however, which I shall pass in this case, rests upon the ground, that the plaintiffs have not, by their bill, shown either that they have no remedy at law, or that having a legal remedy, it has been exhausted.

The argument is, that because the land belonged to the wife, and the personal estate to the husband, an action at law could not have been maintained, either by the latter alone, or by the husband and wife jointly.

But this, I think, is an erroneous view of the effect of the agreement of these parties. That agreement, as I understand it, obliged William Ridgeway, on, or before the day stipulated, to secure to the defendant, a good title to the farm, and if this was done, whether the deed was executed by him alone, or by him and his wife conjointly, could not be material. And especially it would not lie in the mouth of the defendant, to objection the title thus conveyed to him, after receiving the deed, and taking possession of the land. It seems to me, therefore, to be quite clear, that an action at law, either upon the covenant, if no other objection existed to that mode of proceeding, or an action of assumpsit, upon the principles before stated, could be maintained by the husband alone.

It has been supposed, and urged by the complainant's counsel, that the relief sought in this case may be granted, upon the ground, that the bill may be considered, as a bill for a specific performance of the contract. The bill, however, does not seek for any such decree, nor, as I apprehend, is there any